


OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

EXTRAORDINARY

GOVERNMENT OF GOA, DAMAN AND DIU

Labour and Information Department

Order

No. 1/100/72-LAB

The following Award given by Shri Pandurang Mulgaocar, Advocate, Mapusa-Goa, on an Industrial Dispute between M/s. V. M. Salgaocar and Brothers Private Limited, Sambhaji-Goa, and the workmen employed by them is hereby published as required vide provisions of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947):—

In the matter of Arbitration in the dispute between (1) M/S. V. M. Salgaocar & Bro. Pvt. Ltd., Vasco-da-Gama, of the one part, and (2) their Workmen of the Barge Repair Workshop at Cortalim, represented by the Goa Dock Labour Union (INTUC) Vasco-da-Gama

Before the Arbitrator: Shri Pandurang Mulgaonkar, Advocate, Mapusa—Goa.

Parties:

The above named M/S. V. M. Salgaocar & Bro. Pvt. Ltd., represented by Shri L. A. Correia, Administration Manager, and Shri P. K. Lele, Industrial Relation Officer.

v/s

The above named Workmen represented by Shri Mohan Nair, General Secretary, Goa Dock Labour Union, R. V. Gaundalkar, Assistant Secretary Goa Dock Labour Union, A. Colaco, S. P. Cardozo, M. Figueiredo, A. Borges, and M. P. Cardozo, Members of the Works Committee.

AWARD

The above named Parties entered into a settlement on 15-12-1972 and agreed to refer an Industrial Dispute to my arbitration in terms of Section 10-A of the Industrial Disputes Act, 1947, hereinafter called «The Act». An Arbitration Agreement for the reference of the said Industrial Dispute was made in Form C prescribed by Rule 7 of the Industrial Disputes (Central) Rules, 1957.

2. In the said Agreement, the specific matters in dispute for arbitration were stated as follows:—

i) whether the workmen of the Barge Repair Workshop at Cortalim of M/s. V. M. Salgaocar & Bro. Pvt. Ltd., Vasco-da-Gama, are justified in demanding additional D.A./Variable D.A., Washing Allowance, Working shoes, etc., as per the Union's letter No. 512/VMS/72 of 12th August, 1972, together with the enclosures.

ii) if so, to what relief are the Workmen entitled to and from what date?

3. It appears that in terms of the said Rule 7 the said Agreement was forwarded to the Secretary, Industries and Labour Department, Government of Goa, Damam and Diu, and in the Official Gazette, Government of Goa, Damam and Diu, Series II No. 51 dated 22-3-1973, the respective Memorandum of Settlement under Section 2(P) of the Act, was published.

4. By my letter dated 28-3-1973, addressed to both the Parties, it was proposed that the arbitration proceedings be started on 2-5-1973. However, the matter had to be postponed as the said date was not suitable to the Parties. Meanwhile, the Parties were required to submit their respective statements of claims and the respective rejoinders.

5. However, the arbitration proceedings had to be kept in abeyance as it was discovered that, though the said Memorandum of Settlement, had been published in the Official Gazette, the Arbitration Agreement in Form C had not been published in the Official Gazette in terms of sub-section (3) of section 10-A of the Act.

6. After the publication of the said Agreement in Form C in the Official Gazette, Series II, No. 8, dated 25-5-1973, the Parties were requested to state whether they would adopt the statements of case and the rejoinders submitted by them before the said publication, and while the Workmen declared to adopt their previous statement and rejoinder, it was stated on behalf of M/s. V. M. Salgaocar & Bro. Pvt. Ltd., that they would file a fresh written statement of their case in place of the previous one submitted by them. Meanwhile, the Parties by their joint letter dated 26-6-1973 extended the date of arbitration by 90 days with effect from the said date 22-6-1973.

7. After a new statement and rejoinder were submitted by the Parties a hearing was held on 11-8-1973, where Shri Mohan Nair, on behalf of the Workmen and Shri P. K. Lele on behalf of M/s. V. M. Salgaocar & Bro. Pvt. Ltd., herein-after called «The Company», gave as reproduced their respective statements and rejoinders and exhibited the same alongwith the respective annexures, as it is seen from the record of the respective proceedings made on the same date 11-8-1973.

8. At the stage of perusal of the pleadings of the Parties for the purpose of framing the relevant issues, the Representatives of both the Parties submitted that there was a possibility of settling the matter referred to my arbitration, by mutual negotiations between the Parties, and that the hearing be adjourned to be fixed after the information of the Parties regarding the result of the intended mutual negotiations.

9. Section 2(P) of the Act defines the «Settlement» as meaning a settlement arrived at in the course of conciliation proceeding and as including a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agree-

ment has been signed by the Parties thereto in such manner as may be prescribed and a copy thereof has been sent to an Officer authorised in this behalf by the appropriate Government and the conciliation officer. It has been held that from the language used in the said definition of «Settlement», it is clear that a settlement can be arrived at between the employer and employees at any time even during the pendency of the adjudicatory proceedings. It has been held in *Garment Cleaning Works V. D.M. Aney* (1970) II L.L.J. 195 Bom. (DB), per Patel, J, that the Industrial Tribunal cannot refuse to accept the settlement made by the Parties as there is no provision in the Act which gives powers to the Industrial Tribunal to veto the settlement as arrived at between the Parties.

10. Section 11 of the Act lays down that an arbitrator appointed u/s 10-A of the Act, like an Industrial Tribunal, constituted u/s 7-A of the Act, shall follow such procedure as the arbitrator may think fit. I think that the law laid down in respect of the settlement made by the Parties vis-a-vis the Industrial Tribunal, applies also to the arbitrator. With this view, I agreed that the Parties may try to reach a settlement of the matter before me, by mutual negotiations.

11. By their joint letter dated 17-9-1973, the Parties extended the date of arbitration by further 60 days with effect from the said date 17-9-1973 on the ground that such time was required for them to complete the mutual negotiations to arrive at a settlement to be presented to me for a consent award. Today, i.e. on 16th November, 1973, the Parties submitted a Memorandum of Settlement dated 15-11-1973 and signed by the Representatives of both the Workmen and Company and the Representatives of the Parties present before me confirmed that the contents of the same Memorandum of Settlement represent the expression of the amicable settlement of the dispute arrived at by them.

12. In my opinion, it is incumbent upon me as arbitrator to see whether by the terms of the Settlement submitted before me the specific matters in dispute referred to my arbitration have been adjusted wholly or in part and whether the same settlement is fair, just, equitable and reasonable.

13. As it is seen from para 5) of the Written Statement of the Case (Exh. W 1), dated 9th May, 1973, the Goa Dock Labour Union representing the Workmen submitted that the specific matters in dispute for arbitration are the demands contained in the letter No. 512/VMS/WS/72, dated 12th August, 1972, addressed by the Union to the Company, and that the same demands are as follows:—

1. Medical facilities to the families of Workmen.
2. Washing Allowance.
3. Increments in D.A. (V.D.A.).
4. Milk Allowance.
5. Permanency of Workmen.
6. Departmental Promotion.
7. Shoes for Workmen.
8. Increase in Food Allowance and
9. Maternity Leave.

14. I am pleased to record here that, though the Company in its Written Statement (Exh. C 1), dated 17th July, 1973, raised some technical grounds as regards the existence of any demands or of any dispute to be adjudicated upon by me, the Company withdraw all such technical grounds, and the preliminary objections arising therefrom, and paved the way to satisfy all the demands above enumerated in para 13, through an amicable settlement with the Workmen.

15. However, the withdrawal of the preliminary objections by the Company does not exempt me from my duty to examine what are the specific matters referred to my arbitration, and to see that this Award will not travel beyond the scope of the dispute to be adjudicated upon by me in furtherance of the Agreement in Form C executed by the Parties on 15th December, 1972.

16. A perusal of the said Agreement shows that the Parties agreed to refer to my arbitration (i) the first question whether the Workmen are justified in demanding additional D.A./Variable D.A., Washing Allowance, Working Shoes, etc., as per the Union's letter No. 512/VMS/WS/72, of 12th August, 1972, together with the enclosures thereto; and, in case of my finding in affirmative to this first question, (2) the second question of what is the relief to which the Workmen are entitled to and from what date.

17. Copies of the said letter dated 12th August, 1972, have been exhibited both by the Workmen (Exh. W 5) and by the Company (Exh. C 4) as an annexure to their respective Written Statement. All the 9 demands enumerated in the above para 13 are found mentioned in the very Subject heading the said letter dated 12th August, 1972, as follows;—

“Sub: — Revision of Conditions of Service Demands for Medical Facilities to the families of Workmen, Washing Allowance, Increment in Dearness Allowance, (Variable D.A.), Milk Allowance, Permanency of Workmen, Departmental Promotion, Shoes for Workmen, Increase in Food Allowance and Maternity Leave”.

18. In view of this, it is within the scope of the present arbitration to give a finding on the question whether the Workmen are justified in making the said 9 demands. The settlement now arrived at shows that the Company has now agreed that the Workmen were justified to do so.

19. The Company had contended in para 5 of its Written Statement (Exh. C 1) that the Union was incompetent to serve any demand upon the Company, mainly because a settlement was signed between the Parties on 16-3-1971 (Exh. C 6) with a Clause 5 providing that the said Settlement would be binding on the Parties for a period of 3 years from the date of its signing, i.e., upto 15-3-1971. It was the contention of the Company that the said Settlement dated 16-3-1971 provided for revision of wage scales, dearness allowance, and other allowances in light of the recommendations of the Central Wage Board for Engineering Industries as accepted by the Government of India vide its resolution published in the Official Gazette, Part I, Section I, dated 26-3-1970. The stand taken by the Company was that the said existing Agreement (Exh. C 6) dated 16-3-1971 was binding on the Parties till 15-3-1974, and that the position in regard to issues covered under the said Settlement (Exh. C 6) dated 16-3-1971 could be reviewed only upon the expiry of the said Settlement (Exh. C 6).

20. I have perused the Memorandum of Settlement (Exh. C 6) and am satisfied that the same Settlement was made between the Parties to the present arbitration and that it was agreed by them that the same Settlement would be binding on them for a period of 3 years from the date of signing of the same, i.e., 9-3-1971. However, after the Parties by mutual agreement and voluntarily have decided that the said Settlement is no bar for them to reach the present Settlement dated 15th instant, I need not deal with the grounds advanced by the Parties for an against the said Settlement (Exh. C 6) being a bar to entertain the demands under dispute made before the expiry of the period agreed upon in the said Settlement (Exh. C 6).

21. Therefore, in view of the very Memorandum of Settlement dated 15th instant, my finding in respect of the first question is that the Workmen are justified in making the demands enumerated in the above para 13.

22. This brings me to the next question, namely, to what reliefs the Workmen are entitled and from what date.

23. In the Memorandum of Settlement dated 15th instant, the Parties have recorded their agreed solutions to the demands nos. 1 to 8 of the above para 13, and the Representatives of the Parties made a statement before me that they did not record any settlement, as regards the demand of Maternity Leave, because the Parties agreed that the matter be governed in accordance with the law in force as had been demanded by the Union representing the Workmen.

24. The agreed terms of the Settlement dated 15th instant are going to be recorded in the following paras with reference to each one of the said demands nos. 1 to 8 of the above para 13.

25. *Medical facilities to the families of workmen*—This demand is mentioned in the Settlement dated 15th instant as «Medical Benefits» and it is agreed that an amount of Rs. 50/- (Rupees fifty) only per year, be paid by the Company to each Workman towards the expenses incurred for medical benefits in respect of the Workman himself (if he is on leave) or his dependants. The said amount of Rs. 50/- shall be reimbursed by the Company on production of medical certificate or certificates from registered medical practitioner supported by bill either of medical practitioner or of pharmacy. The Workmen concerned shall submit the respective bill/certificate to the Management of the Company who shall, after scrutiny, pay the amount to the Workman within a month's time. The Workman who fails to follow this proce-

dures, will not be entitled to make any claim as Medical Facilities or Medical Benefits. Expenses incurred by the Workman for X-ray, Specialist's examination, doctor's consulting fees, etc. shall not be treated as bills towards Medical Benefits. The Medical Facilities or Benefits agreed upon by the Parties will be stopped on the date when Employees State Insurance Scheme comes into operation in this Territory and the Workmen start getting benefits under the said Scheme. The Medical Facilities agreed upon shall be effective from 1-1-1972.

26. *Washing Allowance*—It is agreed that the Company shall pay Rs. 3/- per month as Washing Allowance to all Workmen who have been supplied with Uniforms in the past and who will be supplied with Uniforms in future. It is agreed also that the Company shall supply two pairs of Uniforms, free of cost, every year to all permanent Workmen. The Uniforms, as agreed upon now by the Parties, shall be supplied on or before 1st January, 1974, subject to the Uniforms already supplied, if any, during the current year of 1973. The Company shall supply free of cost two aprons to all permanent female employees every two years, and the first supply of such aprons shall be made on or before the 1st of January, 1974. The colour and the quality of the Uniforms to be supplied free of cost will be decided jointly by the Management of the Company and Works Committee of the Workmen. The Washing Allowance as agreed by the Parties shall be effective from 1-1-1972.

27. *Increments in D.A. (V.D.A.)*—This is dealt with in Settlement dated 15th instant under the caption of «Dearness Allowance». It is agreed that the Company shall pay to each Workman a flat amount of Rs. 20/- (Rupees twenty) only with retrospective effect from 1-1-1972, and that such amount shall be treated as Fixed Additional D. A. It is also agreed to introduce the Variable Dearness Allowance on the following basis:—

(a) Rs. 5.50 paise (Rupees five and fifty paise) only per month per Workman from 1-4-1973 to 31-12-1973.

(b) Rs. 11.50 paise (Rupees eleven and fifty paise) only per month per Workman from 1-1-1974 to 31-3-1974. The Variable Dearness Allowance as mentioned in this clause (b) will neutralise the All India Consumers Price Index Number at 268 (1949=100).

(c) From 1-4-1974 the V. D. A. will change every six months at the rate of Rs. 1.50 paise (Rupees one and fifty paise) only for every increase of two points. For evolving the average six monthly increase in Index Number the practice followed in respect of the barge crew will be adopted.

It is further agreed that the arrears payable under the present Settlement shall be paid to the Workmen on or before 23rd December, 1973, and that the advances paid to the Workman by way of one and half months wages as per the 2(P) Settlement of 21-12-1972 will be recovered from them in the equal instalments commencing from the salaries for the month of December, 1973.

28. *Milk Allowance*.—This demand was withdrawn by the Workmen, and the Company agreed to supply multi-vitamin pills or other vitamin tablets to the welders, cutters and workers working within the double bottom tank of the barge, and painters. The mode of supply of such pills will be jointly decided by the Union and the Management of the Company, and the supply shall come into force from 1-12-1973.

29. *Permanency of Workmen*.—It was agreed by the Parties that this demand has been covered by the Memorandum of Settlement dated 9-3-1971 and both the Parties agreed to abide by the clause of that Memorandum governing the Permanency of Workmen.

30. *Departmental Promotion*.—It is agreed that the Management of the Company shall devise a formula whereby deserving workman may be promoted after taking into consideration his skill, efficiency, seniority and conduct, and the vacancies in the Section.

31. *Shoes for Workmen*.—The Company shall provide a pair of work-shoes to all permanent Workmen and shall replace the same every two years. The first issue of the work-shoes shall be made on or before 31-12-1973.

32. *Increase in Food Allowance*.—It has been agreed that the Company shall pay a minimum of Rs. 50 (Rupees three and fifty paise) only, and Re. 1/- (Paise one) only,

respectively, for lunch/dinner and for tea allowance, whenever the Workman is deputed to work outside the Workshop premises.

33. The terms of the Settlement mentioned in paras 25 to 32 supra were carefully considered by me in the light of the submissions of the Parties made in the respective Written Statements and Rejoinders in respect of each one of the said demands, and I am satisfied that, in the circumstances of the case, all the terms of the Settlement are fair, just, equitable and reasonable, and that there is no reason whatsoever for me to refuse to pass an award in accordance with the said terms of Settlement dated 15th instant. Consequently, my finding to the second question regarding what relief the Workmen are entitled to, will be that they shall have the reliefs agreed upon as stated in paras 25 to 32 supra; and regarding from what date the Workmen will be entitled to such reliefs, my findings will be that they shall have the same from the dates mentioned in the said paras 25 to 32 as agreed upon by the Parties.

34. Now, I have to deal with the clause of the Settlement dated 15th instant providing that «this Settlement/Award of the Hon. Arbitrator shall be in operation and binding on both the Parties till 31-12-1976».

35. Section 19 of the Act provides as follows regarding the Period of operation of Settlements and Awards:—

«(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on which the memorandum of settlement is signed by the parties to the dispute.

«(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

«(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17-A.

«Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit.

«Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed 3 years from the date on which it came into operation.

36. In terms of Section 10-A(4) of the Act, the arbitrator appointed under sub-section (1) of Section 10-A of the Act shall investigate the dispute and submit to the appropriate Government the arbitration award signed by him. A private settlement between the parties after having received the stamp of adjudication by an adjudicator arrived at during the course of adjudicatory proceedings loses the character of a «settlement» as defined in Section 2(p) and partakes the character of an «award» as defined in Section 2(b) of the Act. There is a legal controversy on the point whether such an «award-settlement» would be operative as a «settlement» in accordance with provisions of sub-section (3) of the Act. A division Bench of the Bombay High Court in *Ghatge and Patil Co. Employees Union V. Powar (K.R.) (1966) 1 L.L.J. 250 (Bom.)* having regard to the language of sub-section (3) of Section 19 of the Act took view that the Industrial Tribunal cannot direct that the award should remain in operation for a period longer than one year despite a longer period agreed upon in the settlement-award. But another Division Bench of the same High Court in *Garment Cleaning Works V. Aney (D.M.) (1970) 11 L.L.J. 195 (199-200) (Bom.)* has taken a different view on the construction of the words «subject to the provisions of this Section» occurring in sub-section (3) of Section 19 of the Act and held that the «settlement-award» shall be binding for the period agreed upon in the settlement rather than the statutory period of one year for an award as provided in sub-section (3) of Section 19 of the Act.

37. In view of this controversy, I would not like to make a direction regarding the period of operation of the present award, and would leave it, u/s 19(3) of the Act, to remain

in operation for a period of one year from the date on which it becomes enforceable u/s 17-A of the Act. However, for the maintenance of the industrial peace and of the commendable conciliatory spirit shown by the Parties to the present dispute, I would suggest that the Government may make use of the powers conferred by the second Proviso to sub-section (3) of Section 19 of the Act, to extend the period of operation of this award until the date agreed upon by the Parties, i. e. 31-12-1976.

38. Before I end, I must thank both the Representatives of the Company and of the Workmen for all the co-operation given to me to complete successfully the present arbitration proceedings. I must congratulate them for a successful amicable settlement arrived at in a spirit of take and give and with consideration for mutual difficulties.

30. As a result of the above, I pass the following award with reference to the specific matters referred to my arbitration.

AWARD

i) I hold that the Workmen of the Barge Repair Workshop at Cortalim, of M/s. V. M. Salgaocar & Bro.

Pvt. Ltd., Vasco da Gama, are justified in demanding additional D. A./ Variable D. A., Washing Allowance, Working Shoes, and other Facilities and Allowances mentioned in their letter No. 512/VMS/WS/72 of 12th August, 1972, to the extent of the terms of the Settlement dated 15th instant, mentioned in paras 25 to 32.

ii) I hereby award that the Workmen are entitled to the reliefs agreed upon in the said terms of Settlement dated 15th instant, mentioned in paras 25 to 32 supra, and from the dates agreed upon in the same terms of Settlement.

Sd/-

PANDURANG MULGAOCAR

Arbitrator

By order and in the name of the Administrator of Goa, Daman and Diu.

P. Noronha, Under Secretary, Industries and Labour.

Panaji, 26th December, 1973.